

High Court (Amendment) Rules, 2023 (No. 1)

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs, in terms of section 56 of the High Court Act [*Chapter 7:06*], has approved the following rules of court made by the Chief Justice and the Judge President —

1. These rules may be cited as the High Court (Amendment) Rules, 2023 (No. 1).

2. The High Court Rules, 2021, published in Statutory Instrument 202 of 2021 (hereinafter called the principal rules) are amended in Rule 2 (“Interpretation”) by inserting of the following definitions —

“address or address for service” means the physical address or electronic address or (where that is the only known address) postal address;

“approved service provider” means Econet, NetOne, or Telecel, or any other service provider specifically identified in Practice Directions issued from time to time as being a service provider whose subscribers are enabled to access the IECMS platform;

“copy”, in relation to a document, means one or more facsimiles of an original document, unless that document is filed or served electronically (in which no multiple filing or serving is required);

“date of filing” means the date on which any pleading envisaged by these rules is lodged with the Registrar;

“deliver or serve” means to either physically or electronically file a pleading or record with the Registrar and immediately thereafter serve a copy on the other party electronically or by physical means;

“filing” means electronic filing or physical filing;

“hearing” means a physical or virtual hearing;

“IECMS account” means a litigant’s Integrated Electronic Case Management account that is accessed through the internet and which enables him or her to access the IECMS platform;

“IECMS platform” means the electronic platform operated by the Judicial Service Commission to enable litigants in the High Court to file and serve process electronically, pay court fees electronically, track their cases electronically, and participate virtually in the proceedings of the court;

“litigant” means a party to proceedings before the court or a judge, and includes a representative;

“representative”, in relation to a representative of a litigant, means a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*]; an official or employee of a registered trade union or employers’ organisation of which the litigant is a member; or a duly authorised representative of a litigant company or other business entity registered or incorporated under the Companies and Other Business Entities Act [*Chapter 24:31*] (No. 4 of 2019);

“sign” means sign a document or process manually or electronically;”.

3. Rule 4 of the principal rules is repealed and replaced by the following—

“Registrar’s office hours

4. (1) The office of the Registrar shall be open from 0830 to 1300 hours and from 1400 to 1600 hours every day which is not a Saturday, Sunday or public holiday.

(2) The Registrar may, in exceptional circumstances, accept a document at a time outside office hours, and shall do so when directed by a Judge or the Chief Registrar in writing.

(3) Litigants may electronically file documents at any time of the day, but—

- (a) process will only be accepted, that is to say issued out of the office of the Registrar, during office hours;
- (b) process will not be accepted if the filing is uncompliant with the *dies induciae* within which any act must be done as stipulated by these rules.”.

4. Rule 15 (“Service of process”) of the principal rules is amended—

- (a) by deleting the heading and replacing it with “*Service, e-filing and related matters*”;
- (b) by replacing subrules (4), (5), (6), (7), (8), (9) and (10) with the following subrules—

“(4) Initial service of summons shall be done physically by the Sheriff, and all other subsequent pleadings, notices of set-down and court orders, and any other process whatsoever shall be done electronically through the IECMS platform. Notices of set down on the unopposed roll for matrimonial applications and process for the arrest of any person writs, warrants also shall be effected by the sheriff:

Notices for writs, warrants have to be served physically by the Sheriff so as to generate a notice of attachment:

Provided that, in exceptional cases, a judge may on application therefor authorise that service under this subrule be effected by the sheriff or by a party or his or her representative.

(5) Any party authorised to serve process through the sheriff shall deliver to the sheriff a physical copy of the process together with as many copies as there are persons to be served.

(6) Process served otherwise than electronically shall be effected between the hours of 0700 and 2100 on any day which is not a Sunday, except for process for the arrest of any person which shall be validly served at any time.

(7) In addition to the methods of service provided for in these rules, service may be effected electronically by way of e-mail, web-portal or other electronic means designated by the Chief Justice in a Practice Direction, in which case—

- (a) proof of such electronic service shall be simultaneously copied to the Registrar;
- (b) a sent status report shall be deemed to be prima facie proof of electronic service.

(8) Except as otherwise provided for in these rules, proof of service of any document required to be filed shall be lodged with the Registrar in all cases not more than forty-eight hours after such service.

(9) The authentication of any electronic communication shall be effected by means of electronic signatures, and certified backup copies shall be kept of the communication in paper form or by such other acceptable means, as may be directed from time to time by the Chief Justice.”.

5. The principal rules are amended by the insertion of the following rules after rule 15—

“General provisions for electronic filing of process

15A. (1) Litigants and representatives must create an IECMS account before filing an appeal, review, application or any other civil process, for which purpose—

- (a) litigants shall provide the mandatory information (including, in the case of a representative, proof of credentials to act as such) required for accessing the IECMS platform;
- (b) a litigant who changes his or her contact details or other particulars relevant for accessing the IECMS platform must inform the Registrar of the new contact details or change of particulars within 48 hours of the change;
- (c) every litigant filing process or pleadings through the IECMS platform may provide an alternate email address for the service or delivery of the same;

(d) every litigant accessing the IECMS platform must use a telephone number allocated by an approved service provider.

(2) Every litigant is responsible for the maintaining the security and integrity of his or her IECMS account and no liability attaches to the IECMS therefor.

(3) A document that is send for filing by electronic communication to the Registry as part of IECMS or, in exceptional cases, by alternate electronic means, shall be—

- (a) send by using the official websites of the Court; and
- (b) in an electronic format approved by the Registrar; and
- (c) capable of being printed in the form in which it was created, without modification or loss of content; and
- (d) electronically stamped or signed by the Registrar, if it is required in accordance with these rules to be stamped or signed by Registrar.

(4) A person who sends a document by electronic communication to the Registry as part of IECMS or, in exceptional cases, by alternate electronic means in terms of these rules shall—

- (a) keep a hard or electronic copy of the document prepared in accordance with these rules; and
- (b) if ordered to do so by the Court, produce the hard copy of the document.

Pagination and indexing of electronic documents, and format of pleading or other legal documents

15B. (1) All documents filed electronically shall be indexed and paginated in accordance with, and (notwithstanding Rule 36) otherwise conform to, the following provisions—

- (a) all documents filed in connection with a particular case shall be contained in a single PDF document which shall be identical to the hard copies of the document;

- (b) the pagination of electronic documents shall appear at the top of the page on the right;
- (c) the applicant or appellant shall create an index of all documents filed electronically, which index shall be identical to the index of the hard copies;
- (d) the format of the documents presented for filing to the court shall be in paragraphs, and the “Times New Roman” font type, size twelve (12), and a line spacing of 1.5 shall be used for all pleadings and documents;
- (e) the pleadings and documents shall not be unreasonably long, voluminous or convoluted.

(2) The Registrar shall reject any document or pleading that does not comply with this rule.”.

6. Rule 56 (“Setting Down of Civil Trials and Civil Trials”) of the principal rules is amended—

- (a) by deleting the heading and replacing it with “*Down and hearing of Civil Trials and other related matters*”;
- (b) in subrule (28) by deleting “parties to any civil action” and replacing it with “parties to any civil action or application”.

7. The principal rules are amended by the insertion of the following rules after rule 56—

“Virtual hearings

56A. (1) There is hereby established an electronic platform hosted by the court for the virtual hearing of applications and actions to be called Virtual Court Platform.

(2) The Virtual Court Platform shall operate on the following principles—

- (a) the platform will facilitate the expeditious, effective, seamless and real-time conduct of court proceedings; and
- (b) the court as the host of the platform is responsible for furnishing the technology, software and equipment

needed to make the platform operational, but each party hosted on it is responsible for, and bears the cost and burden of, providing the technology software and equipment needed by the party to make its participation on the platform effective;

- (c) subject to this rule, self-actors, legal practitioners and their clients and witnesses, may access the Virtual Court Platform from different locations or together, and from locations within or outside Zimbabwe;
- (d) the participation of the parties on the platform can be so arranged that any of the following forms of participation is possible—
 - (i) one party and his or her witnesses may be physically present at the location where the court is sitting, while the other party accesses the platform from a different location; or
 - (ii) both parties may be present at the same remote location if—
 - A. the location is another court at which the police officer is present; or
 - B. in the case where the location is not a court, the court hosting the platform is able, by prearrangement of the parties with the Registrar, to assign a police officer to be present at the location at all times during the hearing;
- (e) the platform is availed for parties to use on a voluntary and consensual basis, subject however to the court's power to direct that, in the interests of justice, a particular case must be heard virtually;
- (f) the platform will ensure the security, authenticity, and where necessary, the confidentiality of virtual proceedings, with provision being made, however, for the live streaming of those cases that the judge deems to be of particular public interest;

- (g) the filing of process and electronic payment of court fees shall be effected using the IECMS platform whether or not the hearing is conducted virtually;
- (h) the platform will ensure that virtual hearings will be conducted as seamlessly as possible without interruption and will resolve any technical challenges in that respect which are the responsibility of the platform as speedily as possible;
- (i) the platform will enable witnesses to participate virtually in the hearings at any court nearest to their place of residence or at any other location by prearrangement with the Registrar:

Provided that a party and his or her witnesses may access the platform from the same location subject to the following conditions—

- A. if there are two or more terminals at the location, the party and his or her witnesses must communicate from different terminals;
- B. if there is only one terminal at the location, the party must not be seen in close proximity with his or her witness while the witness's testimony is being given or tested;
- C. to ensure that witnesses will not be influenced or influence other witnesses, the witnesses who are yet to give testimony and who have given testimony must be absent from the location until their testimony is required;
- D. in any of the foregoing circumstances (subparagraphs (A) to (C)) the police officer present at the location must ensure that no communication (except with the express leave of the court) takes place between the party and his or her

witnesses or between the witnesses themselves;

- (j) the platform affords to the parties before and during the hearing the assistance of technically qualified officers of the court to ensure that the parties hosted thereon are able to participate seamlessly and effectively;
- (k) the Registrar is ultimately responsible, subject to the directions of the court, for the smooth operation of the Virtual Court Platform, and any or all of the parties to the virtual hearing shall have access to him or her during normal office hours for the purpose of ensuring beforehand that the hearing will be conducted seamlessly, efficiently, cost-effectively and expeditiously;
- (l) if a party fails to attend a virtual hearing, having agreed or been directed to participate in the hearing, and there being no technical default attributable to the platform itself, such party shall be subject to default judgment proceedings, and it shall not be competent for it to plead lack of the requisite technical resources if it had not raised that issue with the Registrar before the start for the virtual hearing;
- (m) to ensure the continuity and seamlessness of virtual court proceedings, the platform incorporates backup facilities in case of power outages and interruptions of connectivity, but is not responsible for any defaults in that respect in the technology, software or equipment furnished by the parties to enable them to access the platform (accordingly it is incumbent on each party to make the necessary backup provision against power outages and interruption of internet connectivity at their location);
- (n) the platform affords a quality of connectivity, resolution and definition sufficient to permit legal practitioners, their clients, the judge and the witnesses to observe each other's expression, reactions and demeanour as much as possible as if the participants are present together in an actual court setting.

(8) The agreement of the parties to have a virtual hearing of their matter must be embodied in writing and signed jointly by them and lodged with the Registrar no later than ten days before the proposed virtual hearing.

(9) If, despite the lack of agreement of the parties, the Registrar forms the opinion, on his or her own or at the instance of any of the parties concerned, that it is in the interests of justice for a particular case to be held virtually, then the Registrar shall refer the matter to a judge in chambers for an appropriate determination.

(10) Upon a referral in terms of subsection (9) the judge may give a direction that, despite the lack of agreement between the parties on this issue, their case shall be held virtually subject to such directions to facilitate the hearing as the judge may give.

(11) Before making a direction the judge shall—

- (a) invite the parties to make representations to him or her in chambers;
- (b) require any party alleging any incapacity to participate in a virtual hearing to depose to an affidavit setting forth the particulars of such incapacity.”.

8. Rule 64 (“Setting down, Adjournments, and postponement of matters”) of the principal rules is amended by inserting the following paragraph after paragraph (g)—

“(h) notice of set down shall either be given to the parties or their legal practitioners personally, or sent by registered post or electronic mail to the address of service supplied in terms of these rules.”.

9. Rule 69 (“Writ of execution-general”) of the principal rules is amended by repealing subrule (17) and replacing it with—

“(17) If any property taken in execution is claimed by a third party as his or her property, the Sheriff shall on receipt of the claim, forthwith give notice to the execution creditor.”.

10. Rule 70 (“Execution against moveable property”) of the principal rules is amended by repealing subrules (11) and (12) and replacing them with—

“(11) Unless the court or a judge otherwise directs or the parties agree to the contrary, any movable property sold in execution shall be sold publicly and for ready money by the Sheriff to the highest bidder through an electronic auction system as may be advantageous for the sale thereof and the said Sheriff shall publish notice of sale in a newspaper circulating in the country and the IECMS website.

(12) The day for the start of the sale shall not be less than twelve (12) days after the time of the seizure or attachment and thereafter bids for the electronic auction shall be by public auction without reserve and shall be held online by the placement of bids from 0000 hours until 2359 hours when bidding closes.”.

11. Rule 71 (“Execution against immoveable property”) of the principal rules is amended—

- (a) by repealing subrules (25), (26) and (27) and replacing them with—

“(25) The deposit so made shall be reimbursed to the party concerned out of the first proceeds of the sale, if these are sufficient.

(26) Upon receipt of a deposit in terms of subrule (24), the Sheriff shall conduct the sale of the immovable property concerned.

(27) The sheriff may, if he or she deems it expedient, appoint some fit and proper person, not being interested in the immovable property, to value the same and to report on oath to him or her for his or her guidance such estimated value, and any party interested may, at his or her own expense, in like manner furnish the sheriff with an independent valuation of the property.”;

- (b) by repealing subrule (30) and replacing it with—

“(30) The sale shall be by public auction without reserve and shall be held online by the placement of bids from 0800 hours until 1700 hours when bidding closes.”;

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- (c) by repealing subrule (31);
- (d) by repealing subrule (35) and replacing it with—

“(35) If the purchaser is already in possession of the property, the Sheriff may make a chamber application for an order ejecting him or her or any person claiming to hold under him or her therefrom.”;
- (e) by deleting the chapeau to subrule (44) and replacing it with—

“(44) On receipt of a request in terms of subrule (40) and any opposing or replying papers filed in terms of this subrule, the sheriff shall advise the parties when he or she will hear them and after giving them or their legal representatives, if any, an opportunity to make their submissions, he or she shall either—”;
- (f) by inserting the following subrule after subrule (45)—

“(45a) Upon being notified of an application in terms of subrule (45), the Sheriff shall take no further steps in regard to the confirmation or cancellation of the sale of the property concerned pending the determination of the application.”;
- (g) by repealing the proviso to subrule (46).

12. The principal rules are amended by the insertion of the following rule after rule 89—

“Application of Rules 56(28) and 56A to criminal proceedings

89A. Subject to any other law, Rule 56(28) as read with rule 56A shall apply with necessary changes to criminal matters in criminal proceedings.”.

13. The principal rules are amended by the insertion of the following rule after rule 109—

“Deadline for full migration to paperless proceedings

110. (1) Six months after the promulgation of the High Court (Amendment) Rules, 2023 (No. 1), the Court shall become a fully

paperless Court, save in exceptional circumstances authorised by a Judge of the Court.

(2) Pending any amendment of these rules that may be required to give effect to subrule (1), the Chief Justice, after consultation with the Judge President, may issue to the Court any written directions necessary or expedient to give effect to that subrule, which directions shall be binding and have effect notwithstanding anything contained in these rules for a period of six months, unless the direction concerned is earlier embodied by an amendment of these rules.”.

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